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No. 85-1318

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1985

JOSEPH ADAMICK, ET AL., PETITIONERS

v.

DONALD P. HODEL, SECRETARY,
DEPARTMENT OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a summary judgment order that adjudicated all the claims in petitioners' complaint was a final order within the meaning of 28 U.S.C. 1291.

2. Whether the district court abused its discretion in denying a request to amend the complaint that was made after final judgment was entered against petitioners.

3. Whether the district court correctly granted summary judgment in an action under the Freedom of Information Act, 5 U.S.C. 552, when the uncontroverted evidence showed that all the requested information had been made available.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-8a) is unreported. The order of the district court is unreported and is reproduced as an appendix to this brief (App., *infra*, 1a).

JURISDICTION

The judgment of the court of appeals was entered on October 2, 1985. Justice Rehnquist extended the time for filing a petition for a writ of certiorari to and including January 31, 1986, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In January 1979 the Secretary of the Interior lifted a 15-year moratorium that had been imposed on applications

for entry on public land in Nevada under the Desert Land Act, 43 U.S.C. 321 *et seq.* The Act generally provides that qualified persons may seek to enter and reclaim by irrigation desert land in several of the western states.[1] A person wishing to make an entry must file a declaration stating he intends to reclaim a particular tract of land, show that he has water rights that are based on a bona fide prior appropriation, and file irrigation plans with his declaration. 43 U.S.C. 321, 327.[2] Before entry is allowed, however, the land must be classified as suitable for entry and disposal. 43 U.S.C. 315f. By regulation, the Secretary of the Interior has established a system whereby applications for entry under the public land laws must include petitions for classification if the land has not previously been classified. 43 C.F.R. 2450.1.

Petitioners filed applications stating that they intended to reclaim the land designated in their applications for the purpose of growing the jojoba bean (E.R. 3-4).[3] In June 1980 the Bureau of Land Management (BLM) rejected these applications on the grounds that the jojoba bean was an arid land species that could be grown without irrigation and therefore could not qualify as a proposed crop under the Act. The BLM also concluded that there was no evidence that the jojoba bean could be cultivated on a commercial basis. Petitioners appealed to the Interior Board of Land Appeals, which remanded the applications to BLM for further consideration because the record did not contain

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[1]The Act defines "desert land" as "[a]ll lands exclusive of timber lands and mineral lands which will not, without irrigation, produce some agricultural crop." 43 U.S.C. 322.

[2]If the person making the entry subsequently satisfies the Department of the Interior that he has reclaimed the land and has expended at least three dollars an acre in development costs, that person may receive a patent for the land. 43 U.S.C. 321, 328, 329.

[3]"E.R." refers to the Excerpt of Record filed in the court of appeals.

sufficient information to justify the rejection of the applications. Pet. App. 10a-13a.

Petitioners also sought disclosure under the Freedom of Information Act, 5 U.S.C. 552, of the names and addresses of successful applicants for entry (E.R. 120). The BLM responded that no applications for entry had been approved (E.R. 113, 116, 117). Reviewing officials of the Interior Department, while noting that there was "some confusion as to exactly what" information petitioners sought, interpreted their request as seeking "the names and addresses of those [] applicants whose applications had not been rejected by BLM" (S.E.R. 2-3).[4] The BLM then granted access to all applications pending as of March 25, 1981, which were said to number 2,880. The BLM suggested to petitioners that they make arrangements to view the applications at the Nevada State office, rather than incur potentially substantial copying fees (Pet. App. 15a-17a). Petitioners thereafter requested BLM to copy the first page of each application that had not been rejected (E.R. 130). The BLM thereafter delivered approximately 2,300 pages, which included the first pages from each of the applications that had not been rejected (Pet. App. 28a).

2. Petitioners filed this action in September 1981 in the United States District Court for the District of Nevada. Petitioners alleged that the BLM had failed to process their applications as ordered by the Interior Board of Land Appeals (Pet. App. 45a-56a) and that the BLM had not complied with the disclosure order regarding petitioners' Freedom of Information Act requests (*id.* at 56a-60a). Petitioners sought an order requiring prompt disposition of their applications and disclosure of all requested information, as well as costs and fees and other appropriate relief

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[4] "S.E.R." refers to the supplemental excerpt of record filed in the court of appeals.

(*id.* at 63a-64a). During discovery, the BLM agreed to collect all active applications from the various district offices in Nevada and make them available to petitioners at the Reno, Nevada, office for inspection and copying for a two week period. The magistrate entered this agreement as an order of the court (Pet. App. 21a-24a) and the BLM fully complied with the order (S.E.R. 6, 17).

In December 1982, while petitioner's district court action was pending, the Las Vegas District Office of the BLM issued a proposed classification decision for the land that petitioners had applied to enter (E.R. 82). The BLM concluded that the land was not suitable for entry, principally because there were no new water rights available to support entry (E.R. 83). The BLM accordingly rejected petitioners' applications (E.R. 84). Petitioners' challenges to the proposed land classification decision were rejected by the BLM, and that decision became final when the Secretary of the Interior declined to review the order denying the applications. In August 1983, petitioners filed a petition for review of the land classification decision in the Ninth Circuit, which dismissed the petition for review for lack of subject matter jurisdiction (Pet. App. 29a).

The defendants filed a motion for summary judgment in the district court after the BLM issued the land classification decision, arguing that that decision satisfied the petitioners' claim for a resolution of their applications and that the BLM had supplied all the information requested under the Freedom of Information Act. Petitioners opposed this motion and filed a cross-motion for partial summary judgment. On January 16, 1984, the district court granted the government's summary judgment motion, denied petitioners' cross-motion, and dismissed the complaint (App., *infra*, 1a; Pet. App. 25a-26a).

Petitioners then filed a motion to alter or amend the judgment pursuant to Rule 59(e), Fed. R. Civ. P. In their reply memorandum in support of the motion, petitioners asked for the first time for permission to amend their complaint to state causes of action that arose after filing the complaint. Specifically, petitioners sought to amend their complaint to challenge the validity of the land classification decision that had caused the rejection of their applications. The district court denied the motion to alter or amend the judgment and their request to file an amended complaint. Pet. App. 3a.

3. Petitioners appealed, but then argued in the Ninth Circuit that their appeal was improper. Petitioners contended that the district court had not issued a final order since not all of their claims had been adjudicated. The court of appeals rejected petitioners' contention that the district court's order was not final (Pet. App. 18a).

A separate panel of the court then affirmed the district court's grant of summary judgment in favor of the defendants in an unpublished opinion (Pet. App. 1a-8a). The court noted that the pleadings had not been amended to include the validity of the land classification decision and held that the district court did not abuse its discretion by denying the request for leave to amend the complaint (Pet. App. 4a). Since petitioners had not shown any extraordinary circumstances justifying review of claims not properly raised below, the court declined to consider petitioners' attack on the land classification decision (*ibid.*).

On the Freedom of Information Act claim, the court concluded that summary judgment was appropriate since petitioners had not produced any evidence, by affidavit or otherwise, that contradicted the declarations of the BLM officials that all the requested information had been supplied (Pet. App. 5a). Accordingly, the court held petitioners

were not entitled to attorney's fees under the Freedom of Information Act since they had not substantially prevailed (Pet. App. 8a).[5]

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Review by this Court is therefore not warranted.

1. Contrary to petitioners' contention (Pet. 18-22), the court of appeals correctly held that the district court had entered a final judgment disposing of all of the claims in petitioner's complaint. The district court's judgment (App., *infra*, 1a) is not expressly limited to fewer than all the claims in the complaint and the dismissal was obviously intended to dispose of all of petitioners' claims. Petitioners' attack on the validity of the decision that classified the land as unsuitable and denied petitioners' applications could not have been a part of their complaint since that decision came more than a year after the filing of the complaint, which was never amended. Petitioners contend (Pet. 20), citing the prayer for relief in the complaint (Pet. App. 63a-64a), that they sought to enjoin the BLM from reclassifying the land which they sought to enter. However, the prayer for relief simply does not seek any such relief. In any event, whether the court of appeals correctly concluded that the district court disposed of all the claims in petitioners' complaint is a

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[5]The court also denied petitioners' request for mandamus to order the Secretary of the Interior to " 'investigate alleged irregularities in the administration of the Desert Land Act program in Nevada' " since petitioners had made no showing warranting such extraordinary relief (Pet. App. 7a).

factbound question that does not warrant this Court's attention.[6]

2. There is no merit to petitioners' contention (Pet. 22-23) that the court of appeals erred in concluding that the district court did not abuse its discretion when it rejected petitioners' attempt to vacate the final judgment on the ground that they wished to amend the complaint to include a challenge to the land classification decision. Petitioners cite no authority showing the court of appeals was required to reverse the district court's refusal to grant a postjudgment request to raise new claims that had accrued many months before, a contention that is contrary to the familiar principle that district courts have considerable discretion over such matters. See *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 401 U.S. 321, 330 (1971); *Caddy-Imler Creations, Inc.* v. *Caddy*, 299 F.2d 79, 84 (9th Cir. 1962).

3. Nor is there any merit to petitioners' contention (Pet. 25-27) that the court of appeals erroneously affirmed the grant of summary judgment in favor of the government on petitioners' Freedom of Information Act claim. The uncontroverted evidence in the record established that the Department of the Interior had granted access to all desert land entry applications that had not been rejected and closed, and that the BLM, pursuant to petitioners' request, had supplied copies of the first pages of approximately

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[6]The issuance of the land classification decision mooted most of the so-called unadjudicated claims identified by petitioners (Pet. 18-20) in support of their claim that the district court did not issue a final judgment. One exception to this is petitioners' contention (Pet. 18-19) that the BLM erred by deciding that the jojoba bean was not a suitable crop before making a land classification decision. Although 43 C.F.R. 2450.1 calls for determination of the land classification issue first, petitioners have not shown that they were prejudiced in any way by the BLM's determination of the question whether the jojoba bean was a suitable crop prior to deciding the land classification question.

2,300 applications (see Pet. App. 28a). Furthermore, in the course of discovery after the complaint was filed the BLM opened all of its files to petitioners for inspection and copying (Pet. App. 22a; S.E.R. 6, 17). Plainly, the BLM fulfilled any reasonable construction of its obligations under the Freedom of Information Act. See *Lybarger* v. *Cardwell*, 577 F.2d 764, 767 (1st Cir. 1978); *Nolen* v. *Rumsfeld*, 535 F.2d 890, 892 (5th Cir. 1976), cert. denied, 429 U.S. 1104 (1977). Petitioners failed to produce any evidence or affidavits to support their contrary claim, which was their obligation if they expected to defeat a motion for summary judgment. Rule 56(e), Fed. R. Civ. P.[7]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 1986

[7]Petitioners' remaining claims, which were not addressed by the court of appeals, are manifestly frivolous and do not warrant review by this Court.

DOJ-1986-04

APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Joseph Adamick, et al.	)	
	)	
Plaintiffs	)	Civil No. CV-LV-81-586, RDF
	)	
vs.	)	
	)	SUMMARY JUDGMENT
James G. Watt, Secretary	)	
of the Interior, et al.,	)	
	)	
Defendants.	)	
	)	

This action came on for hearing before the Court, Honorable Roger D. Foley, United States District Judge presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that Defendant's Motion for Summary Judgment is granted and Plaintiff is ordered to pay Defendant's costs herein.

/s/ ROGER D. FOLEY
ROGER D. FOLEY
United States District Judge

Dated: January 16, 1984